IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6846 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHRI.S.P.BHATT

Versus

THE GUJARAT UNIVERSITY

Appearance:

MR BP TANNA for Petitioner

MR SM MAZGAONKAR for Respondent No. 1

MS NANDINI JOSHI, AGP for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 23/02/2001

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner has prayed for a writ of mandamus to direct the Gujarat University and the State of Gujarat to consider the post of field work Assistant

equivalent to that of Lecturer (Teaching) and grant the petitioner pay scale available to the lecturers from 1971 till the date of filing of the petition and further direct the respondents to fix the petitioner's pay in the pay scale of Rs.700-1600 with effect from 1.1.1973 and also fix the petitioner's pay in the subsequently revised corresponding pay scale and to grant the petitioner all the arrears of salary on that basis.

2. The facts leading to filing of this petition, as averred by the petitioner, are as under :-

2.1 The petitioner was appointed as Field Work Assistant in the pay scale of Rs.200-400 on 5.10.1971. The qualifications possesseed by the petitioner at the time of his appointment were B.A. and Master of Labour Welfare (II class). The said qualifications, according to the petitioner, were equivalent to those required of a Lecturer. The appointment of the petitioner was on probation for two years unlike the non-teaching staff who are appointed on probation for one year. The petitioner was teaching the subjects assigned to him in the School of Social Sciences. In his communication dated 12.1.1972 (Annexure "D"), the Reader in Labour Welfare wrote to the Director that the petitioner had been appointed as Field Work Assistant in the scale of Rs.200-400 and his post included teaching and guidance work to the students of Labour Welfare and hence he may be issued thirty library tickets.

2.2 From 1972 onwards the petitioner was assigned teaching work. Reliance is placed on time table at Annexure "C". By his letter dated 20.7.1974 (Annexure "E"), the petitioner wrote to the Director of School of Social Sciences and the Registrar of the Gujarat University regarding the revision of the pay scale of his post pointing out various types of activities performed by the petitioner in support of his contention that his post was a teaching post. The petitioner was signing the muster roll of teaching staff from 1971 to 1979. From April 1982 till the filing of the petition, the petitioner was being appointed as a paper setter and examiner. In the directory published by ILO, the petitioner's name appeared as a Professor as far back as in 1978. Mr Paresh Majmudar, Head of the Department and later on, the Director of the University School of Social Sciences, wrote to the departmental heads of the concerned departments of the leading Universities in the country soliciting their advice on this issue and those educationists opined that it was a teaching post.

2.3 The Desai Pay Commission in 1975 made recommendations for revision of pay scales for non-teaching staff. The post was not covered in the recommendations of the Desai Pay Commission nor the University cared to forward the proposal regarding the petitioner to the Desai Pay Commission (which would suggest that his was a teaching post) but the post was not considered for revision of pay scales even under the recommendations of the Sen Commission in 1976 for teaching staff.

By his communication (Annexure "H"), the petitioner requested that he be given a pay scale of Rs.500-900 with retrospective effect from 1973. (This was not equivalent to the then pay scale of a lecturer which was Rs.700-1600 at the relevant time). By his letter dated 9.9.1978 (Annexure "J"), the Registrar of the University informed the Director of the University School of Social Sciences that inter alia the petitioner was treated as a non-teaching employee. By Government Circular dated 11.6.1978 (Annexure "L"), the Government clarified that a post graduate degree holder should be given a pay scale of Rs.550-900. On 29.12.1979 (Annexure "M"), the Head of the Department of Social Sciences again wrote to the University that the petitioner be given a pay scale of Rs.550-900. Justice Ahmadi Pay Commission recommended a revised pay scale of Rs.970-1420 for the post of Field Work Assistant. This report, however, was scrapped by the Government. The Reviewing Committee revised the pay scale of the petitioner from Rs.970-1420 to 1200-2000. The petitioner contends that this pay scale is a little above that of clerks, but lower than the pay scale of Senior Clerk.

2.4 On 29.10.1986 (Annexure "P"), the Director of the University School of Social Sciences again forwarded a proposal for revision of pay scale of the petitioner to the Registrar of the University and the Chief Secretary of the Government of Gujarat, recommending that the petitioner should be given the pay scale of Rs.1600-2900.

2.5 The petitioner has accordingly filed the present petition for the declaration of equivalence of the post of Field Work Assistant with the post of Lecturer (teaching) and for directions to grant the petitioner salary in the corresponding pay scales of Lecturer from 1971 onwards.

3. On behalf of respondent No.1-Gujarat University, affidavit in reply is filed by Mr MP Jadia, Registrar of the University making the following averments and

submissions :-

3.1 The qualifications prescribed by the University for the post of Field Work Assistant, vide decision of the syndicate taken at its meeting held on 6.6.1959 are:-

"A Degree or Diploma in `Labour Welfare' or `Social Work' from a recognized University or School of Social Work in the II Class or equivalent Degree or Diploma."

The pay scale laid down for the said post was Rs.200-400 at the time of its creation which was also approved by the Government.

3.2 The duties and responsibilities assigned to the post of Field Work Assistant are as follows :-

1. To arrange, under the guidance of the Reader in Labour Welfare for placement of the students in Mills, Factories, Co-operative Societies as also Social Welfare Departments for practical training and to supervise their training at the above centres.

2. To correct the Field Work Journals of the students under the guidance of the Reader in Labour Welfare.

3. To arrange, with the assistance of the other staff, Role-plays by the students in the Department.

4. To keep in touch with Labour Welfare Officers and to collect from them relevant material for "case studies" by the students.

5. To assist in the research project undertaken by the Department.

3.3 The qualifications prescribed for the post of Lecturer in Labour Welfare were as follows :-

"An M.L.W. or an M.S.W. in the Second Class and Five years experience of teaching labour problems.

or

An M.L.W. or an M.S.W. in the Second Class and experience of dealing with labour problems in the field or the Industry for five years.

or

A Master's Degree in the Second Class in social science and five years experience of teaching labour problems.

or

An LL.M. in the Second class with specialization in Labour Legislation and five years experience of teaching Labour Legislation.

or

An LL.M. in the Second Class with five years experience of dealing with labour problems in the industry or the Court.

or

A Ph.D. in Labour Welfare or Social Work or Social Science or Labour Legislation but the thesis pertaining thereto should be in or relating to labour problems.

This would show that the petitioner did not possess the requisite qualifications for the post of lecturer at the time of his appointment. He did not have any teaching experience on the date of appointment.

3.4 Even otherwise, it is the case of the University that merely because the employee is holding the qualifications for the post of Lecturer, he would not be entitled to the pay of the post of Lecturer. He would be entitled only to the pay attached to the post for which he had applied and for which he was selected and on which he was appointed. Right from the beginning the post of Field Work Assistant is treated as a non-teaching post and, therefore, the incumbent of the said post cannot be given the pay of lecturer of Rs.700-1600 or Rs.2200-4000 as claimed by the petitioner.

3.5 If at all the petitioner was assigned any teaching work, that was not because it was part of his duty to attend to such work. That work was assigned to him because of the paucity of staff. Such work was

directed to be discontinued vide University's letter dated 9.9.1978. Similarly, assignment of work of paper setter and examiner to the petitioner was also on account of paucity of staff. As a matter of fact, work of this nature is many a time being assigned to experts on the non-teaching side. In the University, the Librarian as well as Computer Programmer who belong to non-teaching cadre are required to undertake teaching work in their subject but by that fact they do not become eligible for the status of a lecturer or superannuation age of a lecturer. As soon as it came to the notice of the University that the petitioner was signing in the muster roll for the teaching staff, he was restrained from doing so from 1978 and since then he has been signing in the muster roll meant for non-teaching staff. Merely because the petitioner was assigned Library Tickers for books it cannot be said that that fact itself is a justification for granting him of the pay scale of Lecturer as issuance of tickets was necessary in order to enable him to assist the Field Work Supervisor in his work. It is part of the duty of Field Work Supervisor or Field Work Assistant to assist the research students in their field work. It cannot be said that so many number of students have completed their research work under the petitioner's guidance merely because he might have assisted those students in their field work for their desertation.

3.6 The pay scales of non-teaching staff of the University were revised pursuant to the recommendations of the Desai Pay Commission. However, through oversight, post of Field Work Assistant was not included in those recommendations. However, as soon as this fact was brought to the notice of the Government, the Government was pleased to revise the pay scale of the said post. Upon exclusion of the post of Field Work Assistant from the recommendations of Desai Pay Commission for revision through oversight, when the petitioner made a representation in that behalf, he also claimed revision of his scale to Rs.500-900 whereas the pay scale of lecturer at the relevant time was Rs.700-1600. This fact itself shows that the petitioner was aware of the position that his post was a non-teaching post.

3.7 In the other Universities of the country, the post of Field Work Supervisor is considered to be equivalent to a teaching post but the post of Field Work Assistant is not so considered. This becomes evident from the copies of the replies received by the Director of the School of Social Sciences from other Universities, which again are the views of the concerned persons. The qualifications for the post of Field Work Supervisor are

mentioned at page 83 in the affidavit in reply of the University. The petitioner did not possess those qualifications at the time of his appointment. It is, therefore, clear that the petitioner neither possessed the qualifications of a lecturer nor was he recruited for the post of a lecturer.

3.8 The principle of equal pay for equal work would not apply in the present case. The duties of a lecturer and those of a Field Work Assistant are quite different. The norms or criteria for filling up the respective posts are also quite different and, therefore, the duties of Field Work Assistant and those of Lecturer cannot be equated with each other.

3.9 There is no fixed policy or rule regarding the period of probation given to the employees belonging to teaching staff and non-teaching staff at the time of appointment. Generally, teaching staff is given one year's probation. But that by itself cannot make a non-teaching post a teaching one. For example, the post of Registrar of the University is a non-teaching post and yet the probation period given to the incumbent of the said post is of two years.

3.10 Assuming that there is justification that the post of Field Work Assistant requires a higher scale than the one given by the Reviewing Committee, since the post is a non-teaching post, the petitioner is not justified in claiming the status and scale of the post of lecturer.

4. At the hearing of the petition, Mr BP Tanna, learned counsel for the petitioner and Mr SM Mazgaonkar, learned counsel for the respondent University have made their respective submissions on the basis of the respective pleadings of the parties. The thrust of Mr Tanna's submission was that when the petitioner was required to render teaching services as admitted by the respondent University, the petitioner was entitled to be paid salary in the pay scale of a lecturer.

On the other hand, the thrust of Mr Mazgaonkar's defence for the respondent University was that looking to the fact that the post advertised was the post of a Field Work Assistant and that the petitioner was appointed on the said post, the petitioner cannot claim salary for a higher post and that too when the petitioner was appointed way back in the year 1971, the petition filed in the year 1987 suffers from gross delay, latches and acquiescence.

5. Having heard the learned counsel for the parties, it appears to the Court that there is considerable substance in the submission made by Mr Mazgaonkar for the respondent University that when the petitioner accepted the appointment on the post of Field Work Assistant in the pay scale of Rs. 200-400 with open eyes as far back as in the year 1971, it was too late in the day for the petitioner to claim salary for the post of a lecturer by filing this petition in the year 1987. Apart from the impediment of delay, on merits also the Court is not inclined to interfere with the stand adopted by the respondent University that pay scales of different posts are determined on the basis of qualifications for the posts, nature of duties attached to the posts and also the fact that when the University had issued a public advertisement for and held selection for and made appointment to the post "X", a person who had applied for and accepted such appointment with open eyes cannot be permitted to claim the salary for a higher post.

6. The duties and responsibilities assigned to the post of Field Work Assistant were as under :-

1. To arrange, under the guidance of the Reader in Labour Welfare for placement of the students in Mills, Factories, Co-operative Societies as also Social Welfare Departments for practical training and to supervise their training at the above centres.

2. To correct the Field Work Journals of the students under the guidance of the Reader in Labour Welfare.

3. To arrange, with the assistance of the other staff, Role-plays by the students in the Department.

4. To keep in touch with Labour Welfare Officers and to collect from them relevant material for "case studies" by the students.

5. To assist in the research project undertaken by the Department.

It is obvious that these duties cannot be considered to be teaching work. The employee is essentially required to be in the field and assist the students and the department in the field and render all

possible assistance from the point of view of field work. It is for this reason that even the qualifications prescribed for the post were as under :-

"A Degree or Diploma in `Labour Welfare' or `Social Work' from a recognized University or School of Social Work in the II class or equivalent Degree or Diploma."

As against the above qualification, the qualifications prescribed for the post of lecturer were a post graduate degree in Labour Welfare or Social Welfare in the second class and five years experience of teaching labour problems or dealing with labour problems in the field or the industry for five years. In view of the above qualifications and experience prescribed for the post of lecturer, it is obvious that the petitioner did not have this experience when he was appointed as a Field Work Assistant. By directing the respondent University now to grant the petitioner salary in the pay scale meant for lecturers would mean that the Court would be appointing the petitioner as a lecturer when the University had advertised, held selection for and made appointment to the post of Field Work Assistant.

7. The only argument which Mr Tanna for the petitioner, therefore, concentrated on was the principle of `equal pay for equal work' on the ground that the petitioner was assigned teaching work. Even while admitting that for some time the petitioner was assigned teaching work because of paucity of staff and that the petitioner was also assigned the work of paper setting and examining the answer books for some time on account of paucity of staff, the University has pointed out that the work of such nature is many a time assigned to experienced non-teaching staff. For instance, the librarian and computer programmer who belong to the non-teaching cadre are required to undertake teaching work in the subjects, but merely on that ground they do not become eligible for the status of a lecturer or the superannuation age of a lecturer. It is also pertinent to note that assignment of teaching work to the petitioner was discontinued as far back as in 1978. Even then, the petitioner did not institute any proceedings in a Court of law till 1987. Merely because the petitioner was assigned 30 tickets for library books, that cannot confer any advantage on the petitioner because the University has explained that issuance of books was necessary in order to enable the petitioner to assist the field work supervisor and to assist the students in the field work. Similarly the fact whether the post of Field

Research Assistant was included within the purview of the Desai Pay Commission or any other Pay Commission cannot be relevant for deciding whether the post of a Field Work Assistant is a teaching post or whether it is equivalent to the post of a lecturer.

8. In view of the above discussion, there is no merit in any of the contentions raised on behalf of the petitioner. The petition accordingly fails and is dismissed.

Rule is discharged with no order as to costs.

(M.S. Shah, J.)

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